IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition (Ld) No. 590 of 2007

Air India Cabin Crew Association)
Inflight Service Building,)
Medicon Bhavan, NITC, Sahar)
Andheri (E), Mumbai 400 099) ..Petitioner

vs.

1. Union of India, Ministry of)
Labour, through the Government)
Pleader, Aiyakar Bhavan,)
Mumbai 400 020)

2. Air India Limited)
Air India Building, Nariman)
Point, Mumbai 400 021)

3. Mr.V.A.Ferreira)
Executive Director - HRD & IFS)
Air India Limited, NITC,Sahar)
Mumbai 400 099) ..Respondents

Mr.J.P.Cama with Mr.K.P.Anilkumar for petitioner
Ms.L.S.Patil for respondent no.1
Mr.R.A.Dada with Mr.S.K.Talsania and Mr.J.S.Saluja i/b M/s M.V.Kini and Co. for respondent nos. 2 and 3

Closed for orders on 21.4.2007
Judgment pronounced on:21.6.2007

CORAM: SWATANTER KUMAR C.J.
& S.C.DHARMADHIKARI J.
21st June, 2007

J U D G M E N T :(PER S.C.DHARMADHIKARI J.)

1. Rule. Respondents waive service. By consent, Rule made returnable forthwith.

2. By this petition under Article 226 of the Constitution of India, the petitioners challenge the order dated 6th March, 2007 issued by respondent no.3 for and on behalf of respondent no.2 (hereinafter referred to as the impugned order) by which the crew complement is rationalised in the manner stipulated in the same.

3. The crew complement as stipulated was effective from 15th March, 2007. The present petition was filed on 13th March, 2007. An application for urgent ad-interim order was made before the Division Bench of this Court on 14th March, 2007. This Court directed that the impugned order should not be acted upon. This ad-interim order is continuing till date.

4. The factual backdrop is as under:

5. The petitioner is a Trade Union registered under the Trade Unions Act. Respondent No.2, Air India Limited, is a Government Company registered under the Companies Act, 1956. According to the petitioner, it is controlled by the Ministry of Civil Aviation, Government of India and is a State or other Authority as enshrined under Article 12

of the Constitution of India. Respondent No.3 is the Executive Director - HRD and IFS of respondent no.2. The petitioner represents cabin personnel in the workmen category employed by Air India. This Union is recognised and has been negotiating with the management on various charters of demands and arriving at settlements for decades together. The grievance of the members as espoused by the petitioner pertains to the terms and conditions of service, payscales and Flight related allowances, benefits and allied matters.

6. The cabin crew on board the Aircraft is categorised in the following manner:-

a) Inflight Supervisor
b) Flight Purser
c) Assistant Flight Purser
d) Air Hostess
e) Cabin crew (cabin personnel recruited from 2003 onwards)

The post of an Inflight Supervisor is in the managerial cadre and hence the supervisors are not members of the petitioner Association. The categories of Flight Pursers, Asstt.Flight Pursers and Air Hostesses recruited prior to 2003 as compared to the cabin crew recruited from 2003

onwards, are governed by separate and distinct conditions of service, scales of pay, Grades, Flight related allowances etc. They further have been assigned separate and distinct powers, duties, responsibilities and job functions on board the aircraft. Hence, there is no provision for interchangeability of job functions for the categories (a) to (d) mentioned above. The category of cabin crew (e) have uniform conditions of service irrespective of their sex and are presently deployed to perform the functions of an Asstt.Flight Purser or an Air Hostess on board the aircraft, depending upon the vacancy in each of the two separate and distinct categories.

6. Bearing in mind the separate and distinct powers, duties, responsibilities and job functions on board of the categories mentioned above, the term Cabin Crew Complement can broadly be meant to be understood as the number of Cabin personnel required from each of the above categories to perform their separate and distinct job functions on board the aircraft. These would include flight services in all its aspects and handling flight safety functions and emergencies. The strength of the Cabin Crew Complement is determined bilaterally after taking into consideration manifold factors including the capacity/the number of passengers per aircraft, type of inflight/meal services and the corresponding workload, number of Galley

Complexes, the zone-wise configuration/seating of passengers, the number of cabin crew required to handle an inflight emergency including evacuation of the aircrafts, etc. The prescribed number of cabin crew for each type of aircraft multiplied by the number of aircrafts of each type along with provisions made for different types of leave, patterns of operations, duration of flights from departure to the arrival at base (which vary from one day to 16 days), stand by duties at base stations (Mumbai and Delhi), annual flight safety and other refresher courses mandated by the DGCA and some other factors helps us to arrive at the standard Force of the number of cabin crew required to efficiently and harmoniously operate the flights on a 24 hours/365 days basis.

7. On 3rd January, 1981, the respondent Air India had unilaterally reduced the cabin crew complement on board the aircraft. This decision of Air India was challenged by the present petitioner by approaching this Court by way of a writ petition, being writ petition no.44 of 1981. The said petition was based on three main grievances viz., that the said change was a change in service condition of the cabin crew and this was done without notice and hence illegal; that there was a Record Note which did not permit such an unilateral change and the reduction was in violation of the Record Note; and that the reduction was

not done with the consent or approval of the petitioner.

8. According to the petitioner, the above writ petition was opposed by the Management on various grounds but by a detailed judgment this Court noted that there was no

requirement for Air India to give a notice of change under sec.9A of the Industrial Disputes Act, 1947 (for short ID Act). This was because there was an exemption granted by the State Government on 29th August, 1960 in exercise of powers conferred by section 9B of the ID Act. However, the point to be noted is that in 1960, it was the State Government which was the "Appropriate Government" which had a power to grant such exemption. Further, this Court noted that "Record Note" cannot be treated as "settlement" and observation is that the management was permitted to determine the crew complement as per Justice Khosala (1964) and Justice Maheshchandra (1972) Awards. Thus, the judgment of this Court, according to the petitioner, was based on the facts brought to the notice of the Court at the relevant time.

9. It is not disputed that the judgment referred to above was delivered by a learned Single Judge of this Court. The learned Single Judge’s judgment was carried in appeal but the Division Bench did not interfere with the same.

The petitioner, therefore, challenged the judgment and order in the Supreme Court of India and proceedings were numbered as Civil Appeal no.699 of 1981. During the pendency of this Special Leave Petition/Civil Appeal, the negotiations were once again held between the petitioner and the Management on various issues including the cabin crew complement. As a consequence of these negotiations, an assurance came to be given by the Management that the Management had no intention of any unilateral reduction of cabin crew complements. This assurance is recorded in clause 4(ii) of the Record Note of Understanding dated 12th May, 1987 (Annexure A to the petition).

10. It is in these circumstances that the petitioner contends that the judgment of this Court delivered in Writ Petition No.44 of 1981 would not have any application. The subsequent negotiations resulting in the Record Note of Understanding and the agreement dated 25th December, 1988 would govern the service conditions and other matters. The petitioner makes a reference to the agreement dated 25th December, 1988 and more particularly clause (IV) thereof. According to the petitioner, the category-wise cabin crew complement for each type of aircraft is agreed between the parties. A copy of the relevant clause in the agreement along with the schedule is annexed as Annexure B to the petition.

11. It is the case of the petitioner that the Record Note of Understanding signed prior to this agreement will also be entitled to the same status as is enjoyed by the agreement arrived at pursuant to the negotiations. A reference is made to section 2(p) of the ID Act, 1947 defining the term "Settlement". It is the case of the petitioner that with the induction of the newer types of aircrafts in the Air India fleet subsequent to the 1988 Agreement, a need was felt to once again determine the Cabin Crew Complement for them. After exhaustive discussions, the Cabin Crew Complement was once again determined and agreed upon by the parties to this petition. A Record Note of Understanding was signed on 17th March, 1995. Clause 1 of the said agreement deals with the Cabin Crew Complement of all the different types of aircrafts on a categorywise basis. A comprehensive wage settlement under Section 2(p) read with section of the Industrial Disputes Act, 1947 with Rule 58 and Industrial Disputes (Central) Rules, 1957 was entered into between the Respondent No.2 Company and the petitioner Association on 5th June, 1997. Clause 1(a) of the said Settlement states as under: -

> "This settlement is in supersession of all other earlier Agreements, Record Notes, Understandings,

awards and past practices reached between the Management of Air India Ltd. and the Association, in respect of matters specifically dealt with or amended or modified and covered by it.

In so far as matters which are not specifically covered by this Settlement, existing terms and conditions, past practices, duties and responsibilities, benefits and obligations covered by the earlier Settlements/Awards, Record Notes and Understanding will continue to be applicable between the Management and the Association"

Clause 2 of the said Settlement partially modified and reduced the Cabin Crew Complement on B747-400 and B747-300 aircrafts by one cabin crew. The revised Cabin Crew Complement of all the aircrafts continues to be applicable till date.

12. As a result of the aforesaid, the petitioner contends that the combined reading of these agreements/settlements of 1987, 1988, 1995 and 1997 would reveal that the management has given up all its stands taken earlier that they had power to unilaterally determine the cabin crew complements for each type of aircrafts on category-wise basis. On the other hand, the Management has accepted and

continued the practice from 1987 of entering into the agreements with the petitioner and determining the cabin crew complements on Bilateral basis. For the purpose of industrial peace and harmony, the cabin crew complement for the new type of aircraft shall be determined prior to their induction on category-wise basis. The petitioner then makes a reference to the order passed in Civil Appeal No.699 of 1981 by the Hon'ble Supreme Court. The Civil Appeal was disposed of in the light of subsequent developments and changed situation without deciding the issue raised therein. After placing reliance upon the order passed in the civil appeal, the petitioner contends that barring temporary reduction in cabin crew complement for special occasions, the specific, clear and written understanding was that the cabin crew complement would be determined in terms of the agreement/settlement arrived at between the parties. Thus, no unilateral decision would be taken by the Management.

13. The petitioner's submission is that after expiry of the settlement of 1997, a charter of demand in respect of the wage dispute and other grievances was submitted. There was discussion in respect of this charter of demand. The counter proposal was given by the Management to the petitioner on 10th April, 2006. In the counter proposal, a suggestion was made that the cabin crew complement may

be reduced as stated in the proposal. After receiving the counter proposal the Managing Committee of the petitioner discussed the proposed reduction and decided to object the same on the grounds which are more particularly set out in para 3.17 of the petition.

14. While not disputing the fact that the flights have operated with less than the prescribed and agreed cabin crew complement, the petitioner urges that this is no excuse to permanently reduce the cabin crew complement as prescribed in the agreement/Record Note and settlement. Similarly, the other contention is that merely because the petitioner agreed to fly with less number of crew than the one agreed upon on board does not mean that the settlement has been give a go-by and brushed aside by them. This is no authority for the Management to arbitrarily and unilaterally reduce the cabin crew complement.

15. Yet, the Management in a meeting with the Director Personnel on 16th February, 2007 put forward its demand that the cabin crew complement would be reduced but the petitioner objected to the same by a detailed reply, copy of which is annexed as Annexure F to the petition.

16. Ignoring the objections the impugned order has been passed and now the cabin crew complement is as under:

Aircraft	Crew Complement
747-4CO	16
A310	8
B777-200	11
B777-200LR	12 (for Long haul flights) 11 (for normal flights)
B777-300ER	13
B747-300	11
B747-400C	12

17. Challenging this order that the present petition has been filed. Shri Cama, learned Senior Counsel appearing for the petitioner, submits that the impugned order is contrary to law and wholly arbitrary. It violates the mandate of Articles 14, 19(1)(g) and 21 of the Constitution of India. Shri Cama submits that whilst Management contends that Record Notes and Settlements are not binding, in Writ Petition No.116 of 1984, the same employer has urged and successfully relied upon Record Notes in dismissing the Writ Petition filed by an Air Hostess. It was contended that such Record Notes are binding. They have thereafter persuaded the Division Bench in Appeal No.1068 of 1984 to once again take a view that Record Notes are binding as an agreement between

parties. They have followed this up before another Division Bench in Writ Petition No.932 of 1997. Lastly, in the case of Air Indfia Cabin Crew Assn.Vs. Yeshaswinee Merchant and others and other appeals ((2003) 6 SCC page 277) , they have pursuaded the Hon'ble Supreme Court to take the view that the employees' claim therein wrongly nullified binding agreements and settlements. The conduct of the respondents is thus entirely self serving. The respondents change their stand as it suits their convenience irrespective of the fact that their affidavits are on solemn oath. Indeed, it is because of this reason that in the last mentioned the judgment of Hon'ble Apex Court has also referred to "...self serving proposals made by the employer...." The above conduct of the respondents is barred by estoppel and indeed their persistent stand is, with respect, clearly contumacious. The reduction in staff strength on board the aircraft is likely to increase workload to the extent that it affects the health of the crew. Many crew are already suffering the effect of overload. It is also likely to adversely affect the safety of the passengers and the aircraft in case of an emergency. The Management is not bothered with any of these aspects in their endeavour to try and improve their bottom line at any cost.

18. Shri Cama has taken us through section 9A of the ID

Act, 1947 and the judgment delivered by this Court in Writ Petition No.44 of 1981 and another judgment of a learned single Judge of this Court in Misc.Petition No.281 of 1074 decided on 4th July, 1974. Shri Cama has submitted that the action of the respondents violates the settlement, agreement and Record of Notes. He submits that the contention that determination of cabin crew complement is a management's decision/action is contrary to all principles of industrial law. Once the complement could not have been unilaterally altered then it is implicit that it is condition of service. The working hours of the workman is part and parcel of the working conditions and terms of service. If they are sought to be altered then notice of change under sec.9A is mandatory. That having not been done, the impugned order is ex facie bad in law. It adversely affects the service conditions of the petitioner and in any event it is unilateral and, therefore, vitiated by breach of principles of natural justice.

19. On the other hand Shri Dada, the learned Senior Counsel appearing for the Management submits that (i) all the issues raised by the petitioner were finally decided by the learned single Judge of this Court in W.P.No.44 of 1981 by an order and judgment dated 27th January, 1981. The said judgment was confirmed upto the Hon'ble Supreme

Court of India and by the said judgment the learned single Judge held (i) that the question of deployment and/or reduction in crew complement as also the matter of Standard Force and/or pattern of crew scheduling are matters essentially and basically partaking the character of management function and it is not a matter of industrial adjudication. The learned Counsel submitted that the learned single Judge rejected the submission of the petitioner that reduction in cabin crew complement amounts to change in condition of service within the meaning of sec.9A read with IVth Schedule of the Act and, therefore,cannot be effected without notice of change and accepted that respondent no.2 was exempted from the provisions of sec.9A vide notification dated 29th August, 1960. The learned Counsel also submits that the learned single Judge rejected the submission that in view of the Record Note dated 10th February, 1978 whereby the crew complement was decided in agreement of the petitioner Union, any change in the decision agreed upon in the Record Note has to be arbitral or with consent of the petitioner and held that as per Justice Khosala award as reaffirmed by Justice Mahesh Chandra Award, the position is that the final decision in the matter of deployment of cabin crew complement would be taken by the Managing Director and whose decision will be final and binding on the Union. Since the Management had agreed to consult, is

the actual consultation resulted into Record Note. It was indeed a fortuituous circumstance.

20. Even in the absence of said Note, the Management would have been perfectly within its right to take its final decision in the matter of crew complement which decision would have been binding on the Union and workmen. This Court rejected the contention of the petitioner about increase in work load and considered the savings on account of rationalisation of cabin crew and rejected the submission of the petitioner that the impugned decision in the matter of reducing crew complement was arbitrary or unjust. Learned Counsel urged that it is the contention of the petitioner Union that after the decision of this Hon'ble Court, respondent no.2 has not asserted its right to take final decision in the matter of crew complement. Reliance is placed by the petitioner Association on 4 Record Notes/Agreements in the year 1987, 1988, 1995 and 1997. This submission of the petitioner Association is totally misconceived and the said submission has been specifically rejected by the learned single Judge. Shri Dada, learned Senior Counsel submitted that the subsequent Record Note and Settlement are also outcome of consultation where there had been consensus on the crew complement. It is submitted that as observed by the learned single Judge in judgment dated 27th January, 1981

even in absence of such consensus, the Management of respondent no.2 is perfectly within its right to decide the crew complement and such decision will be binding on the Union and the workmen. Learned Counsel submitted that in none of the agreements/Record Notes, the Management has ever conceded or given up its right to take a final decision in the matter of crew complement as granted by various Awards and judgments. The Record Notes/Agreements relied upon by the petitioner Union merely indicate that in a given case there was a consensus between the Management and the Association arising out of consultation which is indeed a fortuituous circumstance as held by the Hon'ble Court. In absence of consensus, the management of respondent no.2 is not precluded from taking final decision on the crew complement. The learned Counsel submitted that respondent no.2 has clarified that the reduction in crew complement merely indicates the reduction of number of crew and this could be done in each category and, therefore, the question of introducing interchangeability of duties does not arise and that the association has not demonstrated in what way the reduction in cabin crew would lead to interchangeability. The learned Counsel also submitted that the revised cabin crew shall not lead to increase in work load and that the deployment of the cabin crew by respondent no.2 is amongst the highest in the world. The learned Counsel submits

that respondent no.2 has, therefore, rationalised the crew complement with a view to be more cost effective in the competitive global market.

21. Thus, the respondents' submissions can be summarised as under:-

a) The judgment of this Court in Writ Petition No.44 of 1981 concludes the issue'

b) Determination of crew complement is a management's function and not the condition of service;

c) The issues as raised in this petition and before this Court in earlier Writ Petition No.44 of 1981 ' are identical.

d) The judgment of this Court in the above Writ Petition has gained finality in as much as the appeal therefrom has already been dismissed.

e) The Supreme Court order may have left the question open but from a reading of the earlier Judgment of this Court it is clear that no other view on law and facts is possible.

f) In any event, the determination of crew complement is a matter not covered by sec.9A read with Schedule IV (items 10 and 11) of I.D.Act 1947.

g) Alternatively and without prejudice, assuming sec.9A is applicable and attracted, it is not as if the management cannot take the impugned decision.

h) All that is required is discussion and negotiations with the petitioner Union. As long as that is done the decision cannot be faulted merely because it is not to the liking of the Union or employees.

i) If such an approach is not adopted, then, it would be impossible for the petitioner to take any decision while discharging its obligation and performing its functions as a National carrier.

22. With the assistance of the learned Counsel appearing for both sides, we have perused the petition and annexures thereto so also the decisions brought to our notice.

23. For properly appreciating the rival contentions, it would be worthwhile referring to the impugned order and

the events preceding the issuance of the same.

24. All that the impugned order does is to rationalise the crew complement. The management has decided to utilise its resources to the optimum. The impugned order itself makes a reference to various meetings on the wages and crew complements. A reference is made to the discussion held on 16th February, 2007 in the Office of the Functional Director.

25. The discussions took place on 16th February, 2007 with the petitioner Association on the charter of Demand submitted by the petitioner Association. It appears that the Management took a stand that it had exclusive right to determine, decide and enforce the cabin crew complement for all aircrafts. However, there was a difference of opinion between the parties and the petitioner pointed out that unilateral decision is impermissible in the light of clauses of settlement/agreement. In this behalf the Union states and reiterates that the cabin crew complement should be determined mutually by agreement.

26. Thus, the core issue is whether the principle of mutuality and bilateral agreement would govern determination of cabin crew complement or not? The petitioner states that cabin crew complement of any

aircraft is determined on the basis of several factors including the number of passengers in each zone and type of inflight services. At the same time, separate and distinct job functions of each of the categories of cabin crew also need to be taken into consideration while determining the complement.

27. The answer to the above core issue depends upon the nature of the agreement/settlement arrived at between the parties. For the present, we would proceed on the basis that the agreement/settlement between the parties and more particularly that of 5th July, 1997 covers the issue of cabin crew complement. Since, we are proceeding on this basis, it would also be proper to assume that such matters are part and parcel of the terms and conditions of service of the employees of respondent no.2. In such circumstances, further assumption would be applicability of sec.9A of the ID Act, 1947. Both sides placed reliance upon the clauses in the settlement on this issue which is worded as under:

> (a) This settlement is in supersession of all other earlier Agreements, Record Notes, Understandings, awards and past practices reached between the Management of Air India Ltd. and the Association, in respect of matters specifically dealt with or

amended or modified and covered by it.

In so far as matters which are not specifically covered by this Settlement, existing terms and conditions, past practices, duties and responsibilities, benefits and obligations covered by the earlier Settlement/Awards, Record Notes and Understandings will continue to be applicable between the Management and the Association.

b).....

(c) In the context of ongoing challenges facing the Airline in the highly competitive environment, it is agreed between the parties that there should be sustained improvement in the all round performance of the company. With this objective in view the Association agrees to the following:

i) The Association recognises the right of the Management to manage and agrees to abide by and carry out all reasonable instructions given by the Management within the ambit of Settlements.

ii) All wasteful and restrictive practices will be eliminated and productivity will be enhanced.

iii) Management will review/revise/upgrade Inflight Service Procedures to make it competitive and customer oriented as and when the same is required. Suggestions of the Association will be considered.

iv) Cabin Crew will tidy and maintain Aircraft interiors inflight related to Cabin Crew job functions.

v) Cabin Crew will collect headsets/blankets in First Class and Executive Class and replace them in their location after use by passengers inflight."

As far as this settlement and clauses relied upon in the same are concerned, far from assisting the petitioner, their wording would militate against their contentions through out. It is not as if the Management has agreed to or in any manner given up its right to determine the cabin crew complement. A perusal of clause C(i) would demonstrate that the petitioner Association has recognised the right of the Management to manage the affairs and has agreed to abide by and carry out all reasonable instructions given by the management within the ambit of settlement. All that the settlement recognises is that the suggestions of the petitioner Association would be

considered. In this settlement itself, clause 2 refers to the reduction of the cabin crew complement on B747-400 and B747-300 aircrafts.

28. Annexure D to this petition is a copy of form H (Memorandum of Settlement dated 6th May, 2007). The clauses which have been reproduced above are worded in this manner after prolonged negotiations and discussion and in the backdrop of several proceedings pending between the parties.

29. Even the earlier settlement which has been very vehemently relied upon by Shri Cama, learned Senior Counsel for the petitioner, would go to show that the cabin crew complement is a matter which is decided by the Management. However, there are provisions to take the petitioner's suggestions into account. It is not as if the cabin crew complement is a matter which would be jointly determined by the parties.

30. In this respect a useful reference can be made to the agreement dated 25th December, 1988, a copy of which is annexed as Exh.B to the petition.

IV. CREW COMPLEMENT:

The issue of crew complement was discussed in its totality and finally settled bilaterally after full scale deliberations and after taking into consideration the contention of the Management and the Association.

Though the Air India Cabin Crew Association and demanded that the existing Cabin Crew Complement should be increased, it was the contention of the Management that the Cabin Crew Complement is excessive. However, keeping in mind the overall interests of the corporation and to maintain harmonious industrial relations at present and in future, it was agreed to reduce the cabin crew complement as under and subject to the following:

a) Optimum utilization of work forces;

b) The present Standard Force will be maintained.

c) Promotional Avenues will not be affected adversely.

d) Rest periods during the flight will be decided between the concerned Flight Pursers in consultation with the Inflight Supervisor for the

cabin crew.

e) Uniform standard of service will be maintained.

In view of this Agreement having been arrived during the pendency in the Supreme Court of Case No.1464 of 1981, it is hereby expressly understood and agreed by and between the parties hereto that:

1) The terms herein arrived at shall be quoted or relied upon in any manner in the said Supreme Court proceedings;

2) The terms herein arrived will continue to have effect as an agreement between the parties hereto throughout the duration of this Agreement. Subsequent to the duration of this Agreement, if the terms are not continued mutually, then, the decision of the Supreme Court in the case No.1464 will come into effect."

31. A bare reading of the above, would indicate that the issue was discussed and a decision is arrived at by consensus but by no stretch of imagination can it be said that the Management has decided for all times to come that

the complement would be determined bilaterally. All that is agreed between the parties is that discussion and deliberations would be held and endeavour would be made to arrive at a bilateral decision. However, if that is not done, then, the Management would take a decision based upon the suggestions given by the petitioner Association and try its best to incorporate them in the ultimate order. However, by no stretch of imagination, can it be said that rationalisation and management of resources so as to achieve the best and optimum result is a right which is given up by the management. Even the petitioner agreed to this course because by reorganisation and rationalisation no adverse consequences would follow. There is no reduction in the overall staff. This is the admitted position.

32. In this context, the role of respondent no.2 as a National carrier becomes significant. The petitioner is looking at the state of affairs de hors the functions and obligations on respondent no.2. While it is true that respondent no.2 has to face stiff competition from the private operators in the market, yet, its role as a national carrier in the backdrop of duties and responsibilities assigned to it in law cannot be brushed aside. While duly discharging its functions and obligations under this Act, the respondent no.2 has to

endeavour and take effort to improve its operations. The services to be rendered have to be efficient as well. With the number of operators in the market increasing and there being global competition respondent no.2 could not have burdened its existing resources any further. It has been pointed out on affidavit that by rationalisation of the crew complement, the management would save approximately Rs.40 crores p.a. Air India's operations have to be cost effective. Thus, while facing competition in the global market, the need for improving the quality of services and at the same time not over spending and wasting the existing resources, the management took a conscious decision to rationalise the cabin crew complement. There is substance in the contention of Shri Dada that by no stretch of imagination the settlements or agreements could be read to mean that such steps can be taken only with the concurrence of the petitioner Association.

33. In the above facts and circumstances, we are of the view that the settlement, agreement and Record Note of Understanding could not be read to mean that right of the management to determine and rationalise the cabin crew complement is subjected to a joint decision. All that these documents envisage is taking into account the views of the petitioner while arriving at a decision on the

issue. In the present case, it has been pointed out to us that discussions were going on for quite some time. It is not as if a sudden decision has been taken by the management. The final order has been issued on 6th March, 2007 but prior thereto on own showing of the petitioner discussion took place. Therefore, we do not find any substance in the complaint that unilateral and one sided decision has been taken by the management. The petitioner in para 3.16 of the petition specifically avers that the charter of demands in respect of the wage issue and other grievances of the employees were submitted after expiry of settlement of 1997. Although the charter of demand was given as early as in 1998-99, it is contended that the discussion on this charter of demand was going on and counter proposal was given by the management to the petitioner on 10th April, 2006. The counter proposal itself is reproduced in this para. In para 3.17 the response of the petitioner to the counter proposal of the management has been set out. Therefore, it is not possible to uphold the contention that the decision of the management to rationalise the crew complement/reduce the number is in any way hasty and pushed through without any discussion or intimation. We have perused the affidavit of the Deputy General Manager (Inflight Service Department). In paras 7 to 19 of the same proper justification has been given, which sets out the practice

prevailing and as to how the management has been empowered to take the final decision.

34. In paras 21 to 23 of the same, this is what is stated:

> 21. The Airlines Personnel Directors Conference ADPC) which is the Airline Human Resources Professionals Global Forum and operates as a conference with defined Airline members meeting annually. APDC aims to facilitate the exchange of best practice, assist and support innovation in the development of human resources management, including that of human resource specialist, while leaving members free to take whatever action to meet the particular needs of their Airlines. The International Airline Practices noted from the said APDC body which has compiled the crew complement data of all member Airlines (International) in their Cabin Crew Manual -APDC 2000 clearly shows that the member Airlines are operating with similar number of crew complement as proposed by the 2nd respondent Company in its order dated 6/3/2007. However, for ready reference, I reproduce here below the data in respect of crew complement as

compiled by the said APDC for the member Airlines vis-a-vis in comparison with Air India's revised crew complement:-

AIRCRAFTG	Crew Complement		
	Complement	Airlines	Air India Revised
B-400	16	British Airways	16
	15	South African Airways	
	15-16	Lufthansa	
	16	Qantas	
	16	Japan Airlines	
	17	Cathay Pacific	
A-310	8	Emirates	8
A-332 (232 seats)	8	Sabena Airlines	
B-777	9	American	11
747-400 Combi)	8	KLM	12

22. I may also place it on record that in the year 2006 substantial number of flights have been operated with short crew than prescribed complement, which is clear from the following table:

NO.OF FLIGHTS OPERATED during Apr.2006 - Feb.07 short of the crew complement			
No of Crew flown	No of flights on B400	No of crew flown	No of flights on A310
17	374	8	1639
16	582	7	1961

15	703	6	780
14	558	3	88
13	346	--	--
12	79	--	--

B400 aircraft - 19 crew complement prior to March, 2007 order.

A310 aircraft - 10 crew complement prior to March, 2007 order.

It is clear from the aforesaid table that the crew flown as crew complement on the said flights has been even less than the revised crew complement stated in the order dated 6th March, 2007.

23. After the introduction of B777-200 ER aircraft in the year 2005, the management decided to deploy 13 Cabin Crew on the said aircraft, which was subsequently modified to 14. Thereafter, in June, 2006, the management reduced the crew complement on the said aircraft from 14 to 13. Similarly the complement of B400-combi which was originally fixed at 16 by the 2nd respondent was subsequently reduced to 15 as per the Management order. Thus it is clear that the Management in consonance with the

> decision of the High Court and the Hon'ble Supreme Court have been deciding and varying the crew complement without any consent of the petitioner Association even though they were consulted and the record of such consultation were kept from time to time."

35. Therefore, the decision to vary the crew complement taken after discussion and consultation with the petitioner Association cannot said to be contrary to law or vitiated otherwise so as to call for interference in writ jurisdiction.

36. The final decision/impugned order is also sought to be justified on the ground that the applicable law is the one pronounced by this Court in Writ Petition No.44 of 1981 decided on 27th January, 1981. The management's decision is in consonance with the same.

37. Both sides do not dispute that the issue involved in the said petition is identical to one before us. This Court in speaking through the learned single Judge (S.C.Pratap J.) (As His Lordship then was) observed thus:

> "3. At the outset and as rightly urged on behalf of the respondent Air India, the question of

development and/or reduction of cabin crew complement as also the matter of standard force and/or pattern of crew scheduling are matters essentially and basically partaking the character of management functions. It is not a matter of industrial adjudication. Though effort was made to challenge this position, the same by now stands beyond the pale of controversy not only by virtue of awards and settlements under the Industrial Disputes Act, (hereinafter the Act) but also by binding decisions of this Court. Mr.Justice Khosala's Award dated 10th February, 1966 held that - "...the final determination of the standard force must rest with the management."

Mr.Justice Mahesh Chandra's subsequent Award dated 25th February, 1972 published in the Central Government Gazette on 25th March, 1972 - extract whereof appears as Exhibit A to the petition - specifically reterates the aforesaid position. Say, even the settlement dated 6th October, 1972 which took place during the pendency in the Supreme Court of two Special Leave Petitions (one by the Union and the other by the management) - challenging Mr.Justice Mahesh Chandra's award - extract whereof is annexed at Exhibit D to the

petition -- also categorically states:

> "....the final decision will be taken by the Chairman and the Managing Director and their decision on Crew Complement or any modification in the equipment shall be final and binding on the Union."

This position stands further reiterated by judgment dated 4th July 1974 by Mr.Justice Rege in Miscellaneous Petition no.281 of 1974, in which judgment Rege J. held as follows:

> "It cannot be disputed that the operation of flights in different seaters on a particular pattern and the consequential scheduling of the crew is purely a managerial function which the respondents are enjoined to perform in discharge of several duties and functions imposed upon them under the Air Corporations Act viz. to provide cafe, efficient, adequate, economical and properly coordinated air transport services."

And still further:

> "As I pointed out above operation of flight on a particular pattern is managerial function and the petitioners cannot acquire a right therein by usage or otherwise."

> The decision of Rege J. was confirmed by a Division Bench (Malvankar and Sawant JJ.) of this Court which, by its judgment dated 26th, 27th and 30th September, and 1st October, 1974, dismissed appeal no.157 of 1974 against the said decision. The question is thus no longer res integra. It stands concluded. Reopening thereof is not permissible in the instant proceedings."

Thus, the learned single Judge not only elaborated on the managerial functions but made a reference to two awards rendered by Mr.Justice Khosala and Mr.Justice Mahesh Chandra so also to the learned single Judge’s decision of this Court in Misc.Petition No.281 of 1974 decided on 4th July, 1974. In the view of the learned Judge the issue is concluded by this judgment is confirmed in appeal by the Division Bench of this Court. Now, reopening the matter would be impermissible.

38. The other aspects also have been noted in this

decision. Paras 6 and 7 of the learned single Judge's judgment read thus:

> "6. Contention next urged on behalf of the petitioners is to the effect that the agreement of 10th February, 1978 (Exhibit C to the petition) precludes the management from reducing the cabin crew complement. How, it cannot be gainsaid that this writing of 10th February, 1978 under head "Record Note" is not a "settlement" as understood by section 2(p) of the Act which defines the same read with Rule 62 of the Rules under the Act. Ofcourse, lacuna in that behalf will not make the record note an agreement illegal or invalid. The said note must, however, be construed in the proper context and background and given its appropriate signification accordingly.
>
> 7. Mr.Justice Khosala's Award, while declaring that the final determination of the aforesaid force must rest with the management, has, thereafter recorded the management's willingness to "consult". This position stands re-affirmed by Mr.Justice Mahesh Chandra's Award. The settlement of 6th October, 1972 (pending the special leave petitions in the Supreme Court) permitted a "recommendation"

in the aforesaid behalf but emphasised and reiterated that the "final decision" would be taken by the Chairman and the Managing Director whose decision on crew complement "shall be final and binding" on the Union. The crux of the matter, therefore, is willingness to consult and consultation. It must, in this context, be held in all fairness that the record note Exhibit C was the record of this willingness to consult and actual consultation. That the said consultation resulted in the said record note is, indeed, a fortuitous circumstance. Even in the absence of the said note, the management would have been perfectly within its rights to take its final decision in the matter of crew complement which decision would have been binding on the union and the workman. In these circumstances, the said note cannot be elevated to any higher legal status. It embodies the final result of the process of consultation initiated at that time. At the present time also, the management did consult the Union. In fact and despite urgency, as many as nine meetings were held to discuss this and other points. Ultimately, the Union not having effectively responded and having indicated an unfortunate attitude of prolongation and delay resulting in continued (purported on this

item itself to be Rs.70,00,000/- per annum) losses to the corporation, the management had to take an expeditious decision in the matter."

39. The only submission is that much water has flown after this decision. In the subsequent settlement and agreements the position is altered. Now, any decision on the issue of cabin crew complement has to be bilateral. In our view, even after the above ruling the position remains the same. All settlements and Agreements subsequent to the single Judge’s view emphasise consultation and discussion with the Union. For the reasons already recorded, in our view, it is not necessary to differ with the above rulings of this Court despite subsequent settlements and agreements.

40. In our view, not only that the management has not acted arbitrarily and unfairly but its decision reducing the crew complement does not adversely affect the petitioner cabin crew Association.

41. Shri Cama, learned Counsel appearing for the petitioner, was at pains to bring to our notice the affidavit which has been filed in Rejoinder and chart annexed thereto. He has relied upon the DGCA Regulations/Guide line referred therein. The argument is

that the cabin crew complement must match the number of passengers to be served and any reduction/rationalisation thereof must not compromise the passengers' safety.

42. We are not impressed by this submission because no material, other than making a reference to these guidlines has been brought to our notice, which would demonstrate that the reduction in the cabin crew complement has adversely affected the life and safety of passengers.

43. We have no doubt in our mind that both sides have passengers' safety foremost in their mind. That is something which is paramount. Interest and safety of passengers is a matter about which there cannot be any compromise. We have no doubt in our mind that in the event of the passengers inflight safety and interest being affected on account of rationalisation of cabin crew complement; the management will take appropriate decision. Therefore, while agreeing with Shri Cama that the passengers' safety must be taken into consideration and given utmost importance, we do not find fault with the impugned order on this count.

44. In the light of the conclusions that we have reached, it is not necessary to go into the contention that alteration or reduction of cabin crew complement is a

condition of service or not. In the facts of this case, as indicated above, we have proceeded on the basis that it may be a condition of service. However, we are of the view that the petitioner Association and its employees are not prejudiced in any manner. Firstly, their services are not affected as there is no likelihood of retrenchment and secondly, it is not their case that they had absolutely no notice of the management's proposal to rationalise the cabin crew complement. On the own showing of the parties, there were negotiations which were held and reference thereto is made not only in the petition but in the impugned order itself as noted above. Even otherwise, the learned single Judge has referred to the judgments of the Hon'ble Supreme Court on the ambit and scope of sec.9A of the ID Act. That provision has been considered in the backdrop of Schedule IV of ID Act. Unless the rationalisation has the consequence spelt out in the subject item (Item no.10 Schedule IV) i.e. likelihood of retrenchment compliance with Sec.9A is not necessary. No material is produced of such likelihood. That is not the case of the Union at all. In the light of the above conclusions, the issue of applicability of proviso to sec.9A and more particularly sub-clause (b) thereof would not arise. The judgment of the learned single Judge of this Court proceeded on the basis that sec.9B of the Act will be applicable on account of issuance of Gazette

Notification. Hence, compliance with sec.9A is not necessary. That issue also need not be gone into and is left open for decision in an appropriate case. The argument based upon the notification already issued lapsing on account of repeal of Air Corporation Act, 1953 by Air Corporation (Transfer of Undertakings) and Repeal Act, 1994 and effect of such repeal on the Notification already issued is also left open for being considered in an appropriate case.

45. Since these larger issues are kept open it is not necessary to make any reference to the decisions cited by Shri Cama on the ambit and scope of sec.9A so also sec.2(p) of ID Act and the period for which settlements remain in force.

46. The decisions which are relied upon, with regard to the age of retirement of the Air Hostess, by Shri Cama would also require no reference in the light of the conclusions reached by us.

47. In the result we are of the view that the issue raised before us about the rationalisation of the cabin crew complement by respondent no.2 Air India stands concluded by the decisions of this Court to which we have made a detailed reference. Assuming that the same is not

covered thereby and capable of being considered by us, even then, we are of the view that the subsequent settlement/agreement/Record Note of Understanding do not alter the position to such an extent that the complement cannot be reduced or restructured or rationalised without concurrence of the petitioner Association. All that is contemplated by these documents is the consultation and discussion with the employees Association. The word "bilateral decision" used in some of agreements, prior to 5th June, 1997 would not mean that the requirement is of "concurrence" and not consultation. In any event, the settlement dated 5th June, 1997 and clauses reproduced by us hereinabove would indicate that the management’s right to rationalise the cabin crew complement is accepted and remains unfettered save and except as indicated therein. The intent is not to make it impossible for the management to take a decision of rationalisation but such a decision must be reached after consultation with the Association. In the present case such attempts have been made and unilateral decision has not been taken as alleged. For the reasons that we have indicated above, namely, consultations went on for quite some time and despite prolonged negotiations and discussions, when the management found that consensus is impossible that it decided to issue the impugned order. In the light of justification and the material produced on affidavit, we

are satisfied that the decision is not arbitrary, capricious, unfair, unreasonable and violative of mandate of Articles 14 and 21 of the Constitution of India as alleged.

48. Consequently the writ petition fails. Rule is discharged. However, there shall be no order as to costs. Ad-interim order to stand vacated forthwith.

(CHIEF JUSTICE)

(S.C.DHARMADHIKARI J.)